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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)
Communications Assistance for) CC Docket No. 97-213
Law Enforcement Act)

To: The Commission

REPLY COMMENTS OF THE CELLULAR TELECOMMUNICATIONS
INDUSTRY ASSOCIATION REGARDING FBI/DOJ JOINT MOTION
TO DISMISS CTIA PETITION FOR RULEMAKING

On March 27, 1998, the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") filed a Joint Motion to Dismiss the Cellular Telecommunications Industry Association Petition for Rulemaking (the "CTIA Petition", filed July 16, 1997) under the Communications Assistance for Law Enforcement Act ("CALEA"). In response to this motion (hereinafter "DOJ Motion"), the Federal Communications Commission sought comment on whether, as DOJ contends, the CTIA Petition was now moot in light of the subsequent promulgation of an industry standard to implement the assistance capability requirements of Section 103 of CALEA.¹

¹ Public Notice DA-762, released April 20, 1998.

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CTIA filed comments on May 20, 1998. CTIA's comments noted that the nature of the dispute between the FBI and industry set forth almost one year ago in the CTIA Petition has not changed, even though the industry standard has since been published. The CTIA Petition was aimed at getting the Commission to decide quickly whether the FBI's punchlist capabilities were required by CALEA so that industry would be able to develop and implement solutions as soon as possible.

Rather than allow the Commission to fulfill its statutory mandate to decide which capabilities were required by CALEA, the FBI and DOJ opposed the Commission action, wasting precious months that could have been spent in developing CALEA solutions.

In its comments, CTIA did not agree with DOJ that promulgation of the industry standard -- standing alone -- mooted the CTIA Petition. Rather, CTIA noted that all of the disputed assistance capability issues that CTIA had first raised in last July's petition were now before the Commission on various other petitions brought by DOJ and others. Similarly, CTIA noted that the extension request in its petition, which DOJ inexplicably failed to mention

to the Commission,² as well as the extension petitions of others, were being addressed by the Commission in this proceeding. For those reasons, CTIA was satisfied that there would be no prejudice to it or industry from dismissal of its petition.³

Several commenters have opposed the DOJ Motion, essentially arguing that the CTIA Petition set forth an important factual record of the development of the industry standard that the Commission must consider these proceedings.⁴ These commenters note, correctly, that the CTIA Petition evidences industry's good faith attempt to resolve the dispute with early Commission intervention, that any delay thereafter is attributable solely to the

² If the Commission had not decided to address the extension request of CTIA and others in these proceedings, then the CTIA Petition would not be moot.

³ As a practical matter, the CTIA Petition asked for adoption of the then-industry consensus document as the safe harbor standard. The document subsequently was modified through the ballot process. CTIA supports the resulting industry standard and the Commission should declare the standard to be the industry safe harbor, rejecting the FBI punchlist entirely and making such modifications to protect privacy as warranted. The CTIA Petition need not remain extant to achieve that purpose.

⁴ See BellSouth Corp. et al. Comments, CC Docket No. 97-213, dated May 20, 1998, at 18; Centennial Cellular Corp. Comments on the FBI/DOJ Motion to Dismiss, CC Docket No. 97-213, filed May 20, 1998; and Comments of SBC Communications, Inc., CC Docket No. 97-213, filed May 20, 1998, at 16.

government, and that industry should not be held hostage to the CALEA compliance date and possible penalties as a result of the DOJ's own conduct. Indeed, DOJ's opposition to the CTIA Petition has made the need for an extension even more acute now than when the CTIA Petition was filed.

In conclusion, since the disputed assistance capability issues and the extension request that CTIA first raised last July are now before the Commission, CTIA does not oppose dismissal of its petition. Nonetheless, the CTIA Petition will evidence the wireless industry's good faith efforts to move CALEA implementation forward despite the joint opposition of the FBI and DOJ.

Respectfully submitted,



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June 5, 1998